

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WOODROW WILSON, III,

Petitioner

v.

C-1-04-206

WARDEN, LEBANON CORRECTIONAL
INSTITUTION,

Respondent

ORDER

This matter was referred pursuant to 28 U.S.C. § 636 to the United States Magistrate Judge for consideration and report on the Petition for Writ of Habeas Corpus filed by the petitioner pursuant to 28 U.S.C. § 2254. The matter is before the Court upon the Report and Recommendation of the Magistrate Judge (doc. no. 19) recommending that the Petition for Writ of Habeas Corpus be denied with prejudice to which neither party has objected.

Upon a *de novo* review of the record, the Court finds that the Magistrate Judge has accurately set forth the applicable law and has properly applied it to the particular facts of this case. Accordingly, in the absence of any objection by petitioner, this Court accepts the Report as uncontroverted.

Accordingly, the Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES BY REFERENCE** into this Order his Report and Recommendation dated July 19, 2006. The Petition for Writ of Habeas Corpus is, therefore, **DENIED WITH PREJUDICE**.

A certificate of appealability shall not issue with respect to Grounds One and Four of the petition, which this Court has concluded are waived and thus barred from review on procedural grounds, because under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000), “jurists of reason would not find it debatable whether this Court is correct in its procedural ruling” as required under the first prong of the *Slack* standard. In addition, a certificate of appealability shall not issue with respect to the remaining claims alleged in the petition, which were addressed on the merits herein, because petitioner has failed to make a substantial showing of the denial of a constitutional right based on these claims. *See* 28 U.S. C. § 2253(c); Fed. R. App. 22(b).

This Court **CERTIFIES** pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of any Order adopting this Report and Recommendation would not be taken “in good faith” and, therefore, **DENIES** petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (1997).

This case is **DISMISSED AND TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court